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No. 307

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

PURITAN CHURCH—THE CHURCH OF AMERICA
PURITAN CHURCH BUILDING FUND, *Petitioners*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PURITAN CHURCH—THE CHURCH OF AMERICA
PURITAN CHURCH BUILDING FUND

By: EDITH S. PARKER

REV. HARRISON PARKER
Trustees acting under the designation of the above entitled cause.
820 Connecticut Avenue, N. W.
Washington, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR WRIT OF CERTIORARI

ORDER BELOW

The final Order of the United States Court of Appeals for the District of Columbia Circuit in this litigation is found on page 51 of the court record and in the appendix hereof.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

This court is vested with jurisdiction to review the orders of the U. S. Court of Appeals for the District of Columbia Circuit by writ of certiorari, under the provisions of Title 28 Part IV, Sec. 1254 (1), United States Code, as amended. Petition for a rehearing was denied by the United States Court of Appeals on March 22, 1955. (R. 68). Time for filing of this petition was enlarged by Chief Justice Warren, to August 15, 1955.

QUESTIONS PRESENTED

In the view of the petitioners, the issues are as follows:

Major Issue

(a) Refusal by the United States Court of Appeals for the District of Columbia Circuit, to accord to the Puritan Church Building Fund the protection of the law established by this Court, in the *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U.S. 238, is a dangerous error under a form of government such as ours. That error is sullying the honor of the entire judicial system of the Government of the United States, including its legal profession. That error might be the cause of the ultimate downfall of the Republic unless it shall be rectified, in this proceeding, by a mandate from the Supreme Court of the United States, to the Tax Court, to restore to that Trust Fund the $50,529.90 cash that was mulct from it by the decision of the Tax Court, dated September 28th, 1951, signed Luther A. Johnson, Judge.

Minor Issues Involved

(b) It was error for the United States Court of Appeals for the District of Columbia Circuit to have denied to the petitioners the rights and privileges vouchsafed to all taxpayers including the petitioners, by the Congress of the United States, under Section 1140(b-1), (2) (3) of the Internal Revenue Code?

(c) It was error for the United States Court of Appeals for the District of Columbia Circuit to have dehored the record and rendered a judgment founded on an issue not raised by either the respondent or the petitioners?

STATUTES INVOLVED

Section 1140(b)(2) of the Internal Revenue Code of 1939 (reenacted as Section 748(2)(B) of the Internal Revenue Code of 1954), provides in part as follows:

"The decision of the Tax Court shall become final", (b)(2) "when the denial of a petition for certiorari, if the decision of the Tax Court has been affirmed or the petition for review dismissed by the Circuit Court of Appeals."

STATEMENT OF THE CASE

On May 24, 1954, this Court denied petitioners' petition to it for a writ of certiorari to review a decision of the United States Court of Appeals for the District of Columbia Circuit. See: 347 U. S. 975. At the time of the denial of the writ of certiorari, rule 33 of this Court was in effect. Under its provisions, the petitioners had until June 9, 1954, the privilege of filing a petition for a rehearing.

Subsequent to his decision against the petitioners, dated September 28, 1951 the petitioners had discovered fraud by Luther A. Johnson, Judge of the Tax Court. Instead of petitioning for a rehearing before the Supreme Court of the United States on issues in which fraud had not been an issue either in the Tax Court or before the said Court of Appeals or before the Supreme Court of the United States, the petitioners chose to return to the Tax Court pursuant to Section 1140(b)(2), and file their motion of June 7, 1954, in which the sole issue was fraud, by Luther A. Johnson, Judge of the Tax Court. The allegations in that motion were:

1. The opinion and judgment failed to reflect the act and conviction of the trial judge.

2. That the opinion and judgment of the trial judge were written by Howard Ellis and John B. Martineau, members of the law firm of Kirkland, Fleming, Greene, Martineau and Ellis, in their offices at 33 North LaSalle Street, Chicago, Illinois.

3. That the opinion and judgment of the trial judge were procured by fraud and coercion.

4. That the opinion and judgment of the trial judge constitute a travesty on justice. (R. pages 8 to 30).

On June 23, 1954, the Tax Court entered an order denying petitioners' motion dated June 7, 1954, on the ground that its judgments dated September 28, 1951, are now final, within the meaning of Section 1140(b)(2) of the Internal Revenue Code; that petitioners' contentions are without merit (R. 31).

On July 9, 1954, petitioners filed their petition for review in the United States Court of Appeals for the District of Columbia Circuit (R. 33). On July 23, 1954, petitioners filed their record on review in the United States Court of Appeals for the District of Columbia Circuit.

On October 22, 1954, the respondent filed his motion to dismiss the petitioner's petition on review on the ground that petitioners were precluded under Section 1140(b)(2) of the Internal Revenue Code from filing in the Tax Court their motion dated June 7, 1954 to vacate the judgment of the Tax Court dated September 28, 1951. (R. 36).

On February 3, 1955, argument was heard on the said motion of the respondent in the said Court of Appeals. On February 14, 1955, the said Court of Appeals entered an order granting the respondent's motion and dismissed the said petition on review. (R. 49)

On March 1, 1955, the said Court of Appeals, sui sponte, and without a request from either the petitioners or the respondent, entered an order vacating its order dated February 14, 1955 (R. 50), and entered a new order, in which it dehored the record, granted respondent's motion, and dismissed in said Court of Appeals the said petition on review (R. 51).

Thereafter on March 15, 1955, petitioners filed in the said Court of Appeals their petition for a re-hearing before that Court en banc (R. 53). On March 22, 1955, the said Court of Appeals denied the petitioner's petition for re-hearing en banc (R. 68).

REASONS RELIED ON FOR ISSUE OF THE WRIT

(a) Fraud effecting the administration of justice vitiates a judgment heretofore entered. Such was the expression of this Court in the early cases of *League* v. *DeYoung*, 52 U.S. 185, and *Nudd* v. *Burrows*, 91 U.S. 426. The unchallenged affidavit of fraud presented by the petitioners to the Tax Court and to the United States Court of Appeals for the District of Columbia Circuit (R. 8), charges, (R. 15) that: (a) John B. Martineau, with stolen keys in his possession, hired a professional thief to enter the office of the Puritan Church—The Church of America and remove therefrom valuable records of the petitioners for the purpose of preventing petitioners from having said records available for their hearings before the Tax Court. (b) On January 17, 1951 (R. 16), Rev. Harrison Parker received, through the United States mail, in an envelope then in use by said Kirkland law firm, documentary evidence over the signature of said Ellis and Martineau which proves that Weymouth Kirkland, said Ellis, said Martineau, Otto Kerner, U. S. Attorney at Chicago and others were engaged in a criminal conspiracy to sabotage the Puritan Church in the courts of the government of the United States. (c) That in the year of 1952, evidence was obtained by the petitioners to prove that the said law firm of Kirkland had received from the Chicago Tribune the sum of $674,000.00 to influence courts of the United States including the Tax Court against the petitioners (R. 16). (d) That the decision of the Tax Court of the United States against the petitioners entered September 28, 1951, signed by Luther A. Johnson, Judge, had been written by said Howard Ellis, said John B. Martineau and one W. A. Schwerdtfeger, a special attorney for the Commissioner of Internal Revenue, in the said Kirkland law firm's office usually occupied by its Mrs. Cohen. (e) That Luther A. Johnson, trial judge in the Tax Court, had been either influenced, intimidated or bribed to limit against the petitioners the evidence ad-

mitted into the record at the Tax Court. (f) That after the close of the Puritan Church litigation in the Tax Court of the United States, said Ellis and Martineau and said Schwerdtfeger used almost a year of time which was charged to the Chicago Tribune at the rate of $40.00 and $30.00 an hour, to write the 46 page decision of the Tax Court which was signed by their Luther A. Johnson, Judge.

Ample opportunity to answer and deny was afforded those, whose integrity was impugned by the allegations in the affidavit. No one came forward with a denial of even one of these charges. In the case of *Root* v. *Universal Refining Co.*, 3 Cir., 169 F. 2d 514, where fraud reached a member of that bench, that court did not hesitate to investigate, and try and punish the guilty judge.

The petitioners' unchallenged affidavit makes out a prima facie case of fraud in the Tax Court. A deficiency income tax assessment against a church trust fund for over $50,000 should not be allowed to stand where it is shown that it was obtained through fraudulent means. It was said in *Stockstrom* v. *Commissioner of Internal Revenue*, (U. S. App. D. C.) 190 F. 2d 283, 289, that:

> " * * * It has been well said that the government should always be a gentleman. Taxpayers expect, and are entitled to receive ordinary fair play from tax officials * * * "

In dismissing the petitioners' petition on review the said Court of Appeals failed to recognize and apply the applicable principle of law laid down by this Court in the case of *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U.S. 238. Speaking through Mr. Justice Black, this court, among other things, at page 244 said:

> "From the beginning there has existed along-side the term rule a rule of equity to the effect that under certain circumstances one of which is after discovered fraud, relief will be granted against judgments regardless of the term of their entry. Marine Insurance

Co. v. Hodgson, 7 Cranch 332; Marshall v. Holmes, 141 U.S. 589."

And at page 248 the Court stated:

"Created to avert the evil of archaic rigidity, this equitable procedure has always been characterized by flexibility which enables it to meet new situations which demand equitable intervention, and to accord all the relief necessary to correct the particular injustices involved in these situations."

In the case of *Root Refining Co.* vs. *Universal Oil Products Co.*, 3 Cir. 169 F. 2d 514, fraud reached a member of the U. S. Court of Appeals for the 3rd Circuit and influenced his opinion in the controversy before him. Upon consideration of the evidence adduced as a result of the fraud hearing, Judge Soper at page 518, quoted from the opinion in Hazel-Atlas:

"the inherent power of a Federal Court to investigate whether a judgment was obtained by fraud, is beyond question."

* * * * *

At page 521, the Court held that an Appellate Court has the inherent power of a court to inquire into the integrity of its own judgments, and said:

"Such a judgment implies the prior existence of a justifiable case or controversy between opposing litigants; but when the controversy has been terminated by a judgment, its freedom from fraud may always be the subject of further judicial inquiry, and the general rule that courts do not set aside their judgments after the term at which they were rendered has no application."

"The power inheres in the appellate as well as the trial court and the former may vacate its own judgment and direct the vacation of a decree of the latter entered pursuant to the mandate of the former." (page 522)

The opinion in that case, concluded by stating that the undisputed evidence of fraud demanded the vacation of

the judgment, and it was so ordered. See also *Keystone Co.* vs. *Excavator Co.*, 290 U.S. 240, 246, on the clean hands maxim.

The court in the *Root* case having concluded that Judge Davis, the appellate judge, had been influenced in his opinion, recalled its mandate in the *Root* cases, vacated the judgment of the Court therein, remanded the cases to the District Court with direction to vacate its judgment therein and dismiss the suits by reason of the fraud practiced upon the Court. Accord: *A. B. Dick Co.* vs. *Marr*, 197 F. 2d 498, 503.

It was appalling for the Tax Court to have declared in its order dated June 23, 1951, that the said motion of the petitioners to vacate its judgment dated September 28, 1951, was without merit. It was equally shocking for the said Court of Appeals to have dismissed the petition for a review of that order. There was merit in the petitioners' charges of fraud and their contention that the $106,000.00 Trust Fund confiscated by the Commissioner of Internal Revenue, was "earmarked" funds of the Puritan Church Building fund. It is evinced by the following decisions of the Tax Court dated April 6, 1955:

THE TAX COURT OF THE UNITED STATES
WASHINGTON

Docket No. 38481

PURITAN CHURCH BUILDING FUND, Harrison Parker and Edith S. Parker, Trustees, *Petitioners*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

DECISION

Pursuant to the Concession by Respondent filed with the Court on April 4, 1955, it is

ORDERED and DECIDED, that there is no liability due from the Puritan Church Building Fund as transferee of the

assets of Puritan Church—The Church of America, LaGrange, Illinois, transferor, for income taxes due from that corporation for the taxable year 1948.

(Signed) EUGENE BLACK
Judge

Enter: ENTERED APR 6 1955
(Date Stamped)

Form 350
Rev. Oct. 1942

THE TAX COURT OF THE UNITED STATES
WASHINGTON

Docket No. 38069

TRUSTEES OF THE PURITAN CHURCH, *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

DECISION

Pursuant to the Concession by Respondent filed with the Court on April 4, 1955, it is

ORDERED and DECIDED, that there is no liability due from Trustees of the Puritan Church as transferee of the assets of Puritan Church Building Fund which is a transferee of assets of Puritan Church—The Church of America, LaGrange, Illinois, transferor, for income taxes due from that corporation for the taxable years October 14, 1945 to December 31, 1945, 1946, 1947 and January 1, 1948 to June 30, 1948.

(Signed) EUGENE BLACK
Judge

Enter: ENTERED APR 6 1955
(Date Stamped)

Form 350
Rev. Oct. 1942

By the order of Luther A. Johnson, Judge of the Tax Court, dated September 28, 1951, over $50,000 in the $106,000 Bible and Building Trust Fund of the Puritan Church in the custody of the Greenwich Trust Company, was confiscated to the Treasury of the Government of the United States; by the order of Judge Black of the same Tax Court, $56,000 of the same trust fund was ordered restored to the Puritan Church Building Trust Fund: the court record before Judge Black was identical with the court record that was before Judge Johnson; the witnesses on both sides were the same; their testimony was the same; the applicable law argued before both Judge Johnson and Judge Black was the same; Judge Johnson found $50,000 against the Puritan Church Building Trust Fund; Judge Black found $56,000 of the same trust fund for the Puritan Church Building Fund; the petitioners have charged Judge Johnson with fraud; the Commissioner has not appealed the final decision of Judge Black.

(B) The only issue raised by respondent's motion to dismiss in the said Court of Appeals was a jurisdictional issue. In clear language in that motion the respondent declared that the judgment of the Tax Court dated September 28, 1951, was final within the meaning of Section 1140(b)(2) of the Internal Revenue Code; therefore, the respondent declared that the said Court of Appeals was without jurisdiction to entertain the petitioners' petition to review. In that motion the respondent carefully avoided the issue of fraud which is the major issue in this litigation.

It is not clear from the order of the said Court of Appeals dated March 1, 1955 (R. 51), whether the said order of said Court of Appeals rests upon the jurisdictional question, raised by the respondent, or upon a consideration of matters which could not have been properly raised in the previous litigation in an Appellate Court. In its final order dated March 1, 1955 (R. 51), the said Appellate

Court carefully avoids making the unequivocal statement to wit: that fraud had been an issue before it, and before the Supreme Court of the United States in previous litigation, and had been decided by it and the Supreme Court of the United States against the petitioners.

The petitioners filed their motion to vacate judgment in the Tax Court on June 7, 1954, which was within the 15 days allowed for a petition for a rehearing under Rule 33 of this court in effect at that time. It was argued in the United States Court of Appeals, by the respondent, that since the petitioners did not file in the Supreme Court of the United States (347 U.S. 975) a petition for a rehearing, the United States Court of Appeals decision dated November 5, 1953, became final immediately within the meaning of the said Section 1140(b)(2) of the Internal Revenue Code.

In the case of *R. Simpson & Co.* vs. *Commissioner of Internal Revenue*, 321 U.S. 225, the petition for certiorari was denied on November 9, 1942. Thereafter, the 25 days then allowed in which to seek a rehearing, expired. In February, 1943, the petitioner was granted leave to file out of time its petition for a rehearing. On June 7, 1943, this Court granted the petition for rehearing, vacated the order denying certiorari and granted certiorari and limited the arguments to the questions of penalty, and the jurisdiction of this Court to entertain a petition filed after the time provided under its rule 33 and 34. This court in a 6 to 3 decision, speaking through the late Justice Jackson, held:

> That for the purpose of Section 1140(b) of the Internal Revenue Code, this court was without jurisdiction to hear the case after the expiration of the time allowed for filing petition for rehearing.

The opinion, however, evidenced the use of the following language:

> "Our rules provide for petition for rehearing as a matter of right within 25 days after judgment and this

rule *has been applied to petition for rehearings of order denying certiorari.* (Emphasis supplied). *We have applied it to cases falling within the purview of Section 1140(b)(2).* (Emphasis supplied). No mandate issue on denial of petition for certiorari and after a final decision, the mandate does not issue until expiration of the 25 days period within which petition for a rehearing may be filed."

The opinion further provided that:

"If therefore, we follow the practice heretobefore served by which *we regard denials of certiorari qualified until the 25 day period expires,* we put the denial and the decision on generally equal basis, except as Congress has seen fit to give the latter an additional 30 days before finality." (Emphasis supplied).

The power to construe and determine the meaning and operation of its rules is an exclusive function of this court. The power of the Congress to declare the circumstances under which a judgment of the Tax Court shall become final, is unquestioned. But such power does not imply the right on the part of the legislative branch to determine the meaning of the rules of this court. The Congress may well be within its constitutional authority in saying that in all cases in which the Court of Appeals have affirmed the decisions of the Tax Court and the Supreme Court has denied certiorari, the judgment of the Tax Court is final. However, the question as to what constitutes a denial of certiorari, immediately arises.

Such questions are judicial and not legislative, and the answer lies within the province of this court and not within the statutory provisions.

Moreover, the language of the *R. Simpson Co.* case, *supra,* has supplied the answer of this court. Any other conclusion would lead to futile casuistry: It would offer an incentive for the filing of petitions for rehearings upon

denial of certiorari in this court, in order to toll the statute in the Tax Court.

On the other hand, when this court has denied certiorari, and the petitioner sees no basis for a petition for rehearing but has a grievance remaining to be redressed in the Tax Court, for after discovered fraud, he is not to be penalized for returning to Tax Court within the time allowed for the filing of a petition for rehearing in this court. To say that after denial of certiorari, the judgment of the Tax Court is final, immediately, but if a rehearing is sought the judgment of the Tax Court does not become final, until the disposition of the petition for rehearing, attributes to the Congress the passage of discriminatory legislation. It is unconscionable to believe that either the Congress or this court contemplates any such result.

(C) It is true that subsequent to the decision of the said Court of Appeals reported in 93 U.S. App. D.C. 129, 209 F. 2d 306, the petitioners in despair, without a lawyer to defend them against the powerful forces which were arrayed against them in the courts, tendered out of order the substance of their affidavit which is now before this Court (R. 8), through a motion for leave to file same in said Court of Appeals. But leave was neither granted nor denied. That court has never taken any action on said motion for leave to produce evidence of fraud in the Tax Court in its decision dated September 28, 1951. The United States Court of Appeals in vacating, sui sponte, its order dated February 14, 1955, and substituting its order dated March 1, 1955 (R. 51), departed so far from the accepted and usual course of judicial proceedings, as to require the exercise of the high powers of this Court to correct such departure.

In view of the importance of the main issue involved in this litigation, the writ prayed for should issue.

Respectfully submitted,

EDITH S. PARKER

REV. HARRISON PARKER
Trustees acting under the designation of the above entitled cause
820 Connecticut Avenue
Washington, D. C.

APPENDIX

APPENDIX

APPENDIX

"Before: EDGERTON, PRETTYMAN and FAHY, *Circuit Judges.*

Order

These cases came on for consideration on respondent's motion to dismiss and said motion was argued by counsel for respondent and by Harrison Parker, trustee for petitioners, and it appearing that petitioners, on November 30, 1953, presented to this Court, in petitions for rehearing of the judgment promulgated November 5, 1953 (*Puritan Church of America* v. *Commissioner of Internal Revenue,* 93 U.S. App. D.C. 129, 209 F. 2d 306), the same allegations and grounds which were presented to the Tax Court on June 7, 1954, in the motion to vacate the judgment of that court of September 28, 1951, and that said petitions for rehearing were denied by this Court on December 11, 1953; and it further appearing that additional motions and affidavits of similar content and tenor were filed in this Court on January 13, 1954, and January 20, 1954; and it further appearing that thereafter petitions Nos. 12,340-1 —Puritan Church, etc. v. Commissioner of Internal Revenue for certiorari were filed in the Supreme Court of the United States and were denied by that Court,

Therefore it is ORDERED by the Court that the aforesaid respondent's motion be granted, and that the petitions for review herein be, and they are hereby, dismissed.

Per Curiam.

Dated: March 1, 1955"

Office - Supreme Court, U. S.
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PURITAN CHURCH BUILDING FUND, *Petitioners*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

MOTION TO HAVE JUSTICES FRANKFURTER, DOUGLAS AND CLARK DISQUALIFY THEMSELVES FROM PARTICIPATION IN THE CONSIDERATION OF THE ABOVE-ENTITLED CAUSE.

EDITH S. PARKER
REV. HARRISON PARKER
Acting under the designation of the above-entitled cause

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PURITAN CHURCH BUILDING FUND, *Petitioners*

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MOTION TO HAVE JUSTICES FRANKFURTER, DOUGLAS AND CLARK DISQUALIFY THEMSELVES FROM PARTICIPATION IN THE CONSIDERATION OF THE ABOVE-ENTITLED CAUSE.

Come now the petitioners herein, and pray that Justices Frankfurter, Douglas and Clark disqualify themselves from participation in this court, in the consideration of the above-entitled cause. The reason is:

There was delivered to Rev. Harrison Parker in his capacity of minister of the Puritan Church at La Grange, Illinois, evidence to prove that the taxable

capital stock of "The Chicago Tribune" had been feloniously omitted from the tax rolls of the State of Illinois for 49 consecutive years, 1873 to 1922, both inclusive. (Cook County assessor's official record).

In its pleadings on file in the Illinois Supreme Court in *People* v. *Board of Appeals,* 367 Ill. 559, The Chicago Tribune admitted that its taxable capital stock had been omitted from the Illinois tax rolls for 49 consecutive years. Its defense was: a few minor corporations (which it named), had also robbed the State of Illinois of capital stock taxes; therefore, it felt compelled to do likewise.

In the course of his ecclesiastical duties, Rev. Harrison Parker tendered such evidence in the following letter to the Cook County grand jury:

"PURITAN CHURCH
THE CHURCH OF AMERICA

Office of the Chancellor
La Grange, Illinois.

Foreman of the Cook County Grand Jury,
Criminal Court Building,
26th Street and California Avenue,
Chicago, Illinois.

Dear Sir:

This Church has in its possession certified documents which show that by an open violation of the Constitution of the State of Illinois, the law passed by her legislature, and an expressed mandate of the United States Supreme Court, the Tribune Company, with the connivance of the Kelly-Nash Democratic machine, has stolen from defenseless Cook County a sum of money which, including the taxes owed to Cook County, the penalty for violating the Constitution and the law, and the

statutory interest thereon, amounts to the enormous sum of one hundred million dollars, the amount for which Mayor Kelly is seeking a new bond issue for Chicago.

In the evidence open to you is the heretofore suppressed testimony under oath by A. T. Ward, the trustee of the Medill Estate, that the Tribune Company, from 1892 to 1925, paid its stockholders in monthly cash dividends, sometimes at the rate of 500% per month, a total amount of TWENTY-EIGHT MILLION AND SIXTY-THREE THOUSAND SIX HUNDRED AND SIXTEEN DOLLARS AND EIGHTY CENTS ($28,063,616.80) upon a paid-in capital of $200,000; the accuracy of these figures is attested by the Clerk of the Supreme Court of Illinois; certified balance sheets of the Tribune Company are also in evidence.

On such cash dividends the Revenue Law of Illinois, upheld by the United States Supreme Court, requires a tax. The certified copies of the books of the County Assessor, also in the possession of this Church, show, that not a single cent of the legal tax was ever either assessed by the Cook County Assessor or paid by the Tribune Company; the taxable items were feloniously omitted from the tax rolls; thus the tax was avoided.

The evidence also discloses that the tax money, which was legally due to Cook County, was used by the Tribune Company to acquire the Ontario Paper Company of Canada and the New York Daily News, appraised at one hundred million dollars.

Thus, by a violation of the Constitution of Illinois and the law passed by her legislature, and a mandate of the United States Supreme Court, the multimillionaire stockholders of the Tribune Company were enormously enriched and the de-

fenseless little home owners of Cook County were correspondingly despoiled.

The taxes now due to Cook County from the Tribune Company, on taxable items omitted from the tax rolls, are never out-lawed. There is no provision in the law either 'to settle' or to compromise either the principal sum due, or the penalty, or the interest. When the debt shall be paid, and it must be if this be a government by Constitution and the law, it must include interest at the rate of 10% per annum up to the day of settlement.

Awaiting your call to display this evidence to your Honorable Body, we remain,

Very truly yours,

THE PURITAN CHURCH,
By: HARRISON PARKER,
Its Chancellor."

Upon the receipt of this letter by the foreman of the Cook County grand jury, Hon. John Prystalski, the "Chicago Tribune-Kelly-Nash political machine's" Chief Justice of the Criminal Court of Cook County, cited Rev. Harrison Parker for contempt of court and sentenced him to ten (10) days in the Cook County Jail for writing and mailing the aforesaid letter; there was no other stated charge against him.

The sentence was upheld by the Illinois Supreme Court, in a decision written by Justice Jones, who had been the "Chicago Tribune's Kelly-Nash political machine's" candidate for Governor of Illinois to defeat the anti-Chicago Tribune's Republican candidate, Len Small. Rev. Harrison Parker remained in Cook County Jail for ten (10) days.

Upon his release from that Bastille, Rev. Harrison Parker wrote and mailed the same letter to the same

Cook County grand jury. Whereupon Hon. Harold G. Ward, the "Chicago Tribune-Kelly-Nash political machine's" Chief Justice of the Criminal Court of Cook County cited and sentenced Rev. Harrison Parker to an additional six months in the same Cook County jail for contempt of court, for no reason other than tendering to the same grand jury for the second time the same evidence of a crime. This sentence was appealed to the Illinois Supreme Court.

At a session of the Illinois Supreme Court held in the chambers of Justice Wilson, John B. Martineau, partner in the law firm of Kirkland, Fleming, Green, Martin and Ellis, the general counsel for the Chicago Tribune, confident that b[illegible]as unobserved, "slipped" to Justice Fulton in the Illinois Supreme Court room, instructions from Howard Ellis to the Illinois Supreme Court to uphold Judge Harold G. Ward's six months' sentence of Rev. Harrison Parker, with a per curiam opinion. (397 Ill. 305).

The per curiam opinion of the Illinois Supreme Court nullified the First Amendment to the Constitution of the United States. Rev. Harrison Parker alarmed the Supreme Court of the United States to the peril in that opinion. It granted a writ of certiorari to review it.

Securely in the Supreme Court by the writ, Rev. Harrison Parker paid all the statutory fees. The Supreme Court gave him a receipt for his money. The receipt entitled him to a decision of yes or no on the narrow issue then squarely before the Supreme Court of the United States, to wit:

> Did the Illinois Supreme Court possess the power to nullify the Constitution of the United States

and jail an American citizen for exercising the rights guaranteed to him in the Bill of Rights in the Constitution of the United States?

The indefeasible right in Rev. Harrison Parker to mail the aforesaid letter to the Cook County grand jury, had been obtained for him by the blood of his direct Puritan sires spilled in the snow in the American Revolutionary War, all the way from Concord to Yorktown. There was no process in the law of the United States by which Rev. Harrison Parker could have been jailed for writing and mailing the aforesaid letter, unless a "soldier" adorned with the Robe of Justice and stationed by the Government of the United States, in its Supreme Court, to guard "American Liberty" on that "front," "should desert his post."

At that time Hon. Felix Frankfurter was a Justice of the Supreme Court of the United States. He was paid a yearly salary of $25,000 by the Government of the United States to guard all the Bill of Rights by voting affirmatively in the Supreme Court of the United States every time their validity was an issue before that Court. Justice Frankfurter had taken an oath to God to do that; he accepted a salary to do that.

For some reason, or for no reason, Justice Frankfurter chose not to vote to uphold the First Amendment, when its validity was the sole issue in the litigation then squarely before him. By his refusal to vote affirmatively on that issue, Justice Frankfurter caused the suspension of the Bill of Rights in the Constitution of the United States; by his refusal to vote negatively on the issue of nullification of the First Amendment, by the Illinois Supreme Court, Justice Frankfurter caused another step in the demolition of

constitutional government on United States soil and the erection of a Venetian Oligarchy on its ruins (334 U.S. 816).

As a consequence of Justice Frankfurter's refusal to vote to uphold the Constitution of the United States, Hon. Philip Sullivan, the "Chicago Tribune-Kelly-Nash political machine's" U. S. District Judge at Chicago, suspended in peacetime, in the United States, the Writ of Habeas Corpus sought by Rev. Harrison Parker to avoid the six month sentence in the Cook County jail that had been inflicted upon him by the refusal of Justice Frankfurter to vote to uphold the validity of the First Amendment of the Constitution of the United States: Judge Sullivan did not deny Rev. Harrison Parker's petition for the Writ of Habeas Corpus; he suspended the writ: the prisoner, Rev. Harrison Parker, was not taken from his cell in the Cook County jail and produced in open court before a United States judge.

As a consequence of Justice Frankfurter's withdrawal from Rev. Harrison Parker of his defense in the Bill of Rights in the Constitution of the United States; as a consequence of Judge Sullivan's withdrawal from Rev. Harrison Parker of the protection of the Writ of Habeas Corpus, Rev. Harrison Parker was rendered defenseless. As a consequence of that he was compelled to enter the Cook County jail and remain there for six calendar months as the cell-mate of "Three Fingered Jack O'Connor," a professional union labor "slugger."

The charge on the jail register against the Puritan minister was "Contempt of Court." His only offense was revealing to the Cook County grand jury in the aforesaid letter the commission of a felony by the

"Chicago Tribune-Kelly-Nash political machine," by The Chicago Tribune, and by the law firm of Kirkland, Fleming, Green, Martin and Ellis. The felony was the omission of the taxable capital stock of the Chicago Tribune from the tax-rolls for 49 consecutive years. By the omission of this tax, the State of Illinois was robbed of over 100 million dollars, while the stockholders of the Chicago Tribune, were correspondingly enriched.

> (Since the Puritan Church compelled the powerful "Chicago Tribune - Kelly - Nash political machine" of Chicago, to list, assess, tax and collect currently, 14 million dollars as taxes on the same Chicago Tribune's capital stock that had been cunningly omitted from all tax rolls of the State of Illinois for 49 consecutive years, Rev. Harrison Parker, the minister of the Puritan Church, has been indicted five (5) times and jailed ten (10) times on United States soil by the orders of Howard Ellis of the general counsel for the Chicago Tribune. During his 78-year sojourn on this sphere of existence, Rev. Harrison Parker has never been convicted of either felony or a misdemeanor, not even a traffic violation.)

There, and then, the Puritan Church, the petitioner herein, cited Justice Frankfurter to the Committee of the Judiciary of the House of Representatives, for impeachment; that citation is still pending.

By its decision in this litigation, the Supreme Court of the United States will determine whether law abiding persons in the United States will sojourn henceforth, under the peril of a pelf-seeking "Newspaper Dictatorship," or reside under the mercy of Govern-

ment of laws administered by honest lawyers, with subversive lawyers disbarred by the Supreme Court of the United States from the practice of law, in the courts of the government of the United States.

The petitioner, the Puritan Church, cannot believe that Justice Frankfurter can act without bias and without prejudice in the issue which had to be presented by the petitioners to this court for a decision.

Wherefore, the petitioners beg Justice Frankfurter to disqualify himself from all participation in the consideration of the above-entitled cause.

There was at this time in the Supreme Court of the United States pending for a decision, litigation in which it could have been proved that the "Chicago Tribune-Kelly-Nash political machine" had participated in a theft of 100 million dollars of public funds. There was in the litigation a potential for a national scandal worse than the "Tea Pot Dome." All the law and all the facts were against the "Chicago Tribune-Kelly-Nash machine."

To avoid the explosion of the scandal which then hovered over it, the "Chicago Tribune-Kelly-Nash machine" coveted from the Supreme Court of the United States a palliative decision written by Justice William O. Douglas. In his quest before the 1948 Philadelphia Democratic Convention for the nomination for President of the United States, Justice Douglas coveted the "support" of the "Chicago Tribune-Kelly-Nash political machine."

Hon. William O. Douglas, a Justice of the Supreme Court of the United States, received the "support" of this "Chicago Tribune-Kelly-Nash political machine" (see New York Times); the "Chicago Tribune Kelly-

Nash political machine" received from the Supreme Court of the United States its coveted decision written, signed, sealed and delivered by Justice Douglas over written protest of Justices Black, Rutledge and Murphy (333 U.S. 577).

Expenses for opening of the Washington and Philadelphia headquarters of "Douglas for President" were charged by the law firm of Kirkland, Fleming, Green, Martin and Ellis to the Chicago Tribune as legal expenses.

There and then, the Puritan Church, the petitioner herein, cited Justice William O. Douglas to the Committee on the Judiciary of the House of Representatives for impeachment. That citation is pending.

At once, the Puritan Church stirred the Texas legislature to agitate for the impeachment of Justice William O. Douglas. Since that initial effort, the Puritan Church has contributed money, and attended, by representatives, every meeting which had as its objective, the impeachment of Justice Douglas.

With the situation as it is existing, the Puritan Church, the petitioner herein, does not believe that Justice Douglas can decide without bias and without prejudice, any litigation to which said Puritan Church is a party.

Wherefore, the petitioners beg Justice Douglas to disqualify himself from all participation in the consideration of the above-entitled cause.

While Justice Clark of the Supreme Court was Attorney General of the United States, Howard Ellis, lawyer, hired Thomas and Lucas, lawyers, with a legal fee of $50,000 paid by the Chicago Tribune, to obtain

from the Department of Justice of the United States the use of the machinery-of-Justice of the Government of the United States to injure the Puritan Church, the petitioner herein, with a "Fraud Order" and wound Rev. Harrison Parker, its minister, with a criminal indictment.

For a part of their $50,000 "legal fee," said Thomas and Lucas either influenced, intimidated or bribed Messrs. Delaney, Doyle, Kelly and O'Brien of the Fraud Department of the United States Post Office Department, to make outside the court record, "findings" as follows:

1. "The Puritan Church as an institution or body of religious persons is not in existence; (2) there is no Puritan Church; (3) no congregation at La Grange, Ill., which would have need for a big new Puritan Meeting House."

   (Findings of Messrs. Delaney, Doyle, Kelly and O'Brien dated May 6, 1948) over the signature of the Postmaster General of the United States.

Upon such "findings," Hon. Michael Igoe, the "Chicago Tribune-Kelly-Nash political machine's" U. S. District Judge at Chicago, without a notice, without a trial, without a hearing of any kind or character, ordered marked by the United States Government, "Fraudulent, Return to Sender," all United States mail seeking from the Puritan Church at La Grange, Illinois, the solacement of the natural religion of Jesus, or Bibles which were delivered free by that church to any person of any religion, or of no religion, who requested one.

Today, August 1, 1955, a letter seeking from the Puritan Church at La Grange, Ill., the solacement of

the words of Jesus, is marked by the U. S. Government "Fraudulent, Return to Sender."

As a natural concomitant to Judge Igoe's "Fraud Order," an indictment for fraud was returned by a United States grand jury at Chicago against Rev. Harrison Parker and all the officers and trustees of the Puritan Church at La Grange, Ill. The indictment had been written in the law offices of Kirkland, Fleming, Green, Martin and Ellis, by Howard Ellis, John B. Martineau, lawyers, and J. Loy Maloney, the Managing Editor of the Chicago Tribune and "planted" in the Department of Justice under its administration by Attorney-General Clark, for use by the lawyers for the Chicago Tribune.

The sole criminal charge in the 46-page indictment was: the indicted Puritans had collected money for the purpose of building a Puritan Meeting House with no intention of ever building one. The trial of this indictment was assigned by Howard Ellis' executive committee to his favorite U. S. District Judge, the Hon. Michael Igoe.

The innocent Puritans demanded immediate trial under the terms of the Sixth Amendment to the Constitution of the United States. The government dared not go to trial. The reason was as follows:

In quest of evidence to sustain a single fraud charge in the Chicago Tribune's indictment of the Puritans, U. S. Postal Inspector V. V. Sugg discovered documentary evidence which proved that the trustees of the Puritan Church had entered into a contract with Harvey Wiley Corbett, architect of Rockefeller Center, New York City, to pay him a fee of $100,000 cash, to design and build the contemplated Puritan Meeting

House, fourteen months before the indictment of the Puritans had been returned by a United States grand jury.

Second, the said V. V. Sugg discovered from the public records, that the said trustees had paid $35,000 cash for a site on which to build Harvey Wiley Corbett's idea for a Puritan Meeting House, six months before the indictment had been returned.

Third, said V. V. Sugg discovered that the balance of the money collected by the Puritans for the building of a Puritan Meeting House was in a Trust Fund in the Greenwich Trust Company "earmarked" for building Puritan Meeting Houses.

The evidence was delivered to the chagrined Department of Justice of the United States. Inspector Sugg refused to proceed as a witness in the persecution of the Puritans before Howard Ellis' U. S. District Judge, Hon. Michael Igoe. His refusal to proceed, left the United States Government without either a witness, or a scrap of evidence for a trial which had been advertised by the Chicago Tribune from coast to coast.

In this situation, Howard Ellis suggested to the defeated U. S. Attorney at Chicago, that an indictment even though worthless in a criminal trial, could be a "brutal weapon" in the hands of a "fixed" U. S. Attorney, if the Congress of the United States could be induced to pass a statute to compel an indicted person to undergo a psychiatrical examination. The Department of Justice under its administration by Attorney-General Clark, accepted the suggestion. The Congress of the United States passed Howard Ellis' desired law in September 1949.

The Chicago Tribune's indictment of the Puritans had been returned by a United States grand jury in February 1949; its worthlessness was discovered in April 1949; in September 1949, the Congress of the United States, by a "special law," breathed life into Howard Ellis' "dead" indictment of the Puritans.

"Railroading" Rev. Harrison Parker to a United States prison by the Department of Justice is one matter; "railroading" Rev. Harrison Parker to a United States Insane Asylum by the Department of Justice of the Government of the United States is quite another matter: the Government might have on its hands a scandal worse than France's "Dreyfus Affair."

While this question was being agitated in the office of the U. S. Attorney at Chicago (see private notes of Otto H. Kerner, U. S. Attorney), the indictment of the Puritans slumbered on the trial calendar of U. S. Judge Michael Igoe for six calendar months, on the trial calendar of U. S. Judge Phillip Sullivan for twelve (12) calendar months; on the trial calendar of U. S. District Judge Walter LaBuy for eighteen (18) calendar months, where it expired under the terms of the Sixth Amendment to the Constitution of the United States. (See *United States* v. *Fox,* 3 Montana 512).

Now, the Department of Justice of the United States had a "bear by the tail": it could not bring the Rev. Harrison Parker to trial on an indictment that had expired; it could not dismiss the indictment against him, without revealing to the United States Senate the "skullduggery" in which the law firm of Kirkland, Fleming, Green, Martin and Ellis, U. S. Attorney Otto Kerner, the Department of Justice at Washington, U. S. District Judges Igoe and Sullivan, and the

Chicago Tribune had engaged in the Courts of the United States, in a vain effort to incarcerate Rev. Harrison Parker in a U. S. prison, for writing and sending aforesaid letter to the Cook County grand jury.

In desperation, Howard Ellis ordered his U. S. Attorney at Chicago to dismiss out of the indictment all the defendants except Rev. Harrison Parker, and he ordered his executive committee at the U. S. Court House at Chicago to transfer the expired indictment of Rev. Harrison Parker from the "dead" trial calendar of U. S. District Judge Walter LaBuy to the active trial calendar of his U. S. District Judge, J. Sam Perry.

At once, without a notice to Rev. Harrison Parker, without a trial of any kind or character, without ever having seen or talked to Rev. Harrison Parker, U. S. District Judge J. Sam Perry ordered his immediate incarceration at the U. S. Insane Asylum at Downey, Illinois. In his void court-order, on file in the U. S. District Court at Chicago, Judge Perry went "so far" for his Howard Ellis, that he specified in his order that a doctor selected by Howard Ellis should be the sole custodian of Rev. Harrison Parker while at Downey, Illinois.

Twice before, Howard Ellis had one of his Circuit Court Judges at Chicago incarcerate Rev. Harrison Parker in a "public institution" for the accomplishment there of his "death by natural causes." On one of these occasions, the "job" was such a "bungling one" and "left in its wake" such evidence of the guilt of the agents of the Chicago Tribune, that Waymouth Kirkland, its general counsel, in person, "rushed out" to the Cook County Jail and breath-

lessly ordered Warden Moneypenny to produce before him Harrison Parker alive, and effect his immediate release from the Cook County Jail before his death from "natural causes" by arsenic poison could be accomplished in the Cook County Jail by the official jail doctor in the employ of his law partner, Howard Ellis.

(With the knowledge and consent of Weymouth Kirkland, lawyer, Howard Ellis, lawyer, and John B. Martineau, lawyer, the Chicago Tribune for years retained on its pay-roll equipped with pistols, knives, tear gas, sawed-off shot-guns and machine-guns the following named ex-convicts and professional murderers: "Mossy Enright," "Jack Gentleman," "Bill Brockelman," "Gyp the Blood.")

When Judge Perry's void order to proceed to the U. S. Insane Asylum at Downey, Ill., and place himself confidingly into the jurisdiction of Howard Ellis' doctor was delivered to the Puritan minister at his home in Washington, D. C., he tore it up and threw the scraps into the waste basket in his study.

Rev. Harrison Parker had posted with the U. S. District Court at Chicago a $5,000 cash bond to guarantee his attendance for trial at the United States Court House at Chicago. The bond did not guarantee his appearance at the U. S. Insane Asylum at Downey, Ill. When the Rev. Harrison Parker did not appear at the Insane Asylum at Downey and deliver himself into the hands of Howard Ellis' doctor, United States District Judge J. Sam Perry, from the Bench at the U. S. Court House, denounced Rev. Harrison Parker as a "fugitive from justice," cancelled the $5,000 bond for his appearance at the U. S. Court House and issued

a void "bench warrant" for his arrest at his home in Washington, D. C.

The "bench warrant" was served on Rev. Harrison Parker at his home. He was handcuffed, jailed, finger-printed, and taken before Howard Ellis' U. S. District Judge at Washington, D. C., the court order was: Take Rev. Harrison Parker in chains to the U. S. Insane Asylum at Downey. Upon a Writ of Habeas Corpus, Hon. Walter Bastian, U. S. District Judge at Washington, D. C., released Rev. Harrison Parker.

Then, the same United States District Judge, J. Sam Perry, issued a second void "bench warrant" for the arrest and delivery of Rev. Harrison Parker at Howard Ellis' Downey Insane Asylum. Again, the Puritan minister was handcuffed, jailed at the Nation's Capital, finger-printed, and ordered for trial as a "Fugitive from Justice."

On the law and the facts as they were presented by the Department of Justice at the trial in Washington, D. C., Hon. Bolitha Laws, U. S. District Judge at Washington, D. C., refused to order the extradition of Rev. Harrison Parker to the U. S. Insane Asylum at Downey, Ill.

After denouncing Judge Bolitha Laws in a "nation-wide press release" conducted for Howard Ellis, U. S. District Judge J. Sam Perry at Chicago issued a third void "bench warrant" for the arrest of Rev. Harrison Parker at Washington, D. C. Upon the authority of that warrant, the Puritan minister was jailed again at the Nation's Capital, handcuffed, finger-printed and hailed again into the Criminal Dock in the court room of Hon. Bolitha Laws.

There, in reply to a direct question by Judge Laws, the United States Attorney at Washington, D. C., ad-

mitted that the Rev. Harrison Parker was not wanted at Chicago for the criminal trial, but for incarceration without a trial in the U. S. Insane Asylum at Downey. Upon that answer, Judge Laws discharged Rev. Harrison Parker from custody with a written opinion; that was the last ever heard of either Howard Ellis' 1949 indictment or his 1952 attempted commitment of Rev. Harrison Parker to the U. S. Insane Asylum at Downey.

Until stopped by the Court Order of U. S. District Judge Laws at Washington, D. C., the law firm of Kirkland, Fleming, Green, Martin and Ellis for 20 consecutive years, 1935 to 1955, had used in the private practice of law, the Courts of the United States to damage the Puritan Church and used its jails to intimidate its minister.

Copies of the official private records of this law firm, in possession of the Puritan Church, reveal that since the year 1935 Howard Ellis has been paid at the rate of $40.00 an hour and John B. Martineau has been paid at the rate of $30.00 an hour for all the time which they chose to spend in starting and maintaining champertous litigation against the Puritan Church and its minister.

On a certain date, Howard Ellis and John B. Martineau had received from the Chicago Tribune nearly a million dollars in cash for the wilful and wanton destruction which they had wrought in the affairs of the Puritan Church, in the life of its minister, and in the institutions of our government which, as lawyers, they had taken an oath to God, to defend.

Having been in charge of the administration of the Department of Justice when the innocent Puritans

were indicted, jailed and finger-printed, Justice Clark might be embarrassed if he were compelled in this litigation to determine the issue which the petitioners, in their defense, had to present to this Court for a decision.

Wherefore the Puritan Church, the petitioner, begs Justice Clark to disqualify himself from participation in the consideration of the above-entitled cause.

Respectfully submitted,

.....

EDITH S. PARKER

.....

REV. HARRISON PARKER
Acting under the designation of the above-entitled cause

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 307

PURITAN CHURCH—THE CHURCH OF AMERICA, PURITAN CHURCH BUILDING FUND, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

ORDERS BELOW

The order of the Tax Court (No. 307, R. 31-32),[1] denying petitioners' motion to vacate (No. 307, R. 3-31) its previous judgment entered on September 28, 1951 (No. 678, R. 105-106),[2] is not reported. The *per curiam* order of the Court of Appeals (No. 307, R. 51-52; Pet. App.) dismissing

[1] No. 307, October Term, 1955.

[2] No. 678, October Term, 1953.

taxpayers' petition for review (No. 307, R. 33-34) is not reported.

JURISDICTION

The *per curiam* order of the Court of Appeals was entered on March 1, 1955 (No. 307, R. 51-52; Pet. App.). A petition for rehearing was denied on March 22, 1955 (No. 307, R. 68). The petition for a writ of certiorari was filed on August 10, 1955, the time for filing having been extended to August 15 by an order of the Chief Justice, entered on June 7, 1955. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTION PRESENTED

On a prior review of a decision of the Tax Court, the taxpayers, in unsuccessful petitions for rehearing in the Court of Appeals, alleged fraud on the part of the Tax Court; in their petition for certiorari to review the judgment of the Court of Appeals, the taxpayers made no mention of the alleged fraud. Thereafter, following the denial of certiorari, the taxpayers filed a motion with the Tax Court to vacate its decision and repeated the allegations of fraud previously made in the Court of Appeals. The Tax Court, finding taxpayers' contentions to be without merit, refused to vacate its previous decision. Taxpayers then took an appeal to the Court of Appeals, which dismissed the appeal.

The question is whether there was error in the proceedings below.

STATEMENT

On May 22, 1951, the Tax Court, in an opinion by Judge Luther Johnson, held against petitioners on

a federal income tax matter (No. 678, R. 66-105). On September 28, 1951, the Tax Court's decisions were entered (No. 678, R. 105-107). Thereafter, a petition for review was filed with the Court of Appeals for the District of Columbia Circuit, which affirmed the Tax Court, *per curiam,* and entered judgment in favor of the Commissioner on November 5, 1953 (No. 678, R. 108-110).

Petitioners then filed two separate petitions for rehearing with the Court of Appeals, one on behalf of the Puritan Church-The Church of America (No. 678, R. 111-123) and the other on behalf of the Puritan Church Building Fund (No. 678, R. 124-134). In the first of these petitions for rehearing, petitioners made detailed statements and conclusions alleging fraud in connection with the Tax Court's decisions (No. 678, R. 116-122). On December 11, 1953, the Court of Appeals in two *per curiam* orders, denied the petitions for rehearing. On January 13, 1954, and January 20, 1954, additional motions and affidavits were filed with the Court of Appeals which repeated and amplified these allegations. (No. 678, R. 139-140.) Thereafter petitioners duly filed a petition for a writ of certiorari (No. 678, October Term, 1953). No mention of the alleged fraud was made in the petition. On May 24, 1954, this Court denied certiorari. *Puritan Church-The Church of America* v. *Commissioner,* 347 U. S. 975.

On June 7, 1954, petitioners filed in the Tax Court a motion to vacate its decision of September 28, 1951 (No. 307, R. 3-31). As had the earlier

petition for rehearing in the Court of Appeals (No. 678, R. 111-123), the supporting affidavit alleged fraud in connection with the drafting of the Tax Court's findings and opinion (No. 307, R. 7-31).

On June 23, 1954, in an order signed by Judge Withey, the Tax Court, finding their contentions to be "without merit," denied petitioners' motion to vacate (No. 307, R. 31-32). Thereafter, on July 9, 1954, petitioners filed a petition for review in the Court of Appeals for the District of Columbia Circuit (No. 307, R. 33-34).

On October 22, 1954, the Commissioner filed in the Court of Appeals a motion to dismiss taxpayers' petition for review. The Commissioner's motion came on for oral argument, and on February 14, 1955, the court issued a *per curiam* order granting the motion to dismiss. Thereafter, on March 1, 1955, the Court of Appeals vacated its order of February 14, 1955, and issued its final *per curiam* order granting the Commissioner's motion to dismiss (Pet. App.), the order reciting that the substance of petitioners' allegations had earlier been made on November 30, 1953, in the petition for rehearing (No. 678, R. 111-123) and in the motions and affidavits filed on January 13 and 20, 1954. On March 15, 1955, petitioners moved the Court of Appeals for a rehearing *en banc* (No. 307, R. 53-67). On March 22, 1955, the Court of Appeals issued an order denying this petition (No. 307, R. 68). Taxpayers then filed the instant petition for certiorari.

ARGUMENT

The Tax Court was justified in rejecting the taxpayers' motion to vacate its decision of September 28, 1951, and the Court of Appeals' refusal to disturb the Tax Court's action presents no question warranting further review.

The various allegations of fraud made by the taxpayers in their motion to vacate are but repetitious of allegations and assertions unsuccessfully made by them in the Court of Appeals when the Tax Court's decision of September 28, 1951, was before it on review. The Court of Appeals was apparently of the view that these allegations did not, on their face, merit further consideration. In any event, although they had the opportunity to do so, the taxpayers did not renew these allegations when they filed their petition for certiorari in this Court, and thus in effect abandoned them. Following the denial of certiorari, the Tax Court was warranted in carrying out the mandate of the Court of Appeals sustaining its decision of September 28, 1951. The Tax Court's order of June 23, 1954, declining to set aside its previous order which had become final upon exhaustion of the prior appellate proceedings, stated its finding, made after hearing further argument and upon consideration of the record, that "petitioners' contentions are without merit" (No. 307, R. 31-32). The Court of Appeals (Edgerton, Prettyman, and Fahy, JJ.) justifiably declined petitioners' invitation to review the matter once again. In the circumstances, the case should rest where the lower courts have left it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.
H. BRIAN HOLLAND,
Assistant Attorney General.

SEPTEMBER, 1955.

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IN THE

Supreme Court of the United States

October Term, 1955

No. 307

PURITAN CHURCH—THE CHURCH OF AMERICA, PURITAN CHURCH BUILDING FUND, *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONERS

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IN THE

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October Term, 1955

No. 307

PURITAN CHURCH—THE CHURCH OF AMERICA, PURITAN CHURCH BUILDING FUND, *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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REPLY BRIEF FOR PETITIONERS

SUMMARY OF ARGUMENT

I

The contention of the Respondent that the fraud charges of the petitioners are repetitious and has no basis, since under the *Hazel-Atlas* case, 322 U.S. 238 the Tax Court was the only Court where the charges could originate.

II

The position of the Respondent in the Court of Appeals as compared with the position which he now takes before this Court is so irreconcilable that it should make no impression on this Court and form no bar to the granting of Certiorari.

III

The Court of Appeals not only created an issue not raised by the motion to dismiss, but in so doing dehored the record. Such action should receive the condemnation of this Court. The order of the Court of Appeals tends to support the perpetrations of fraud on the institution of Justice and should be reviewed by this Court.

ARGUMENT

I

Respondent's Contention That the Taxpayers' Allegations of Fraud Are Repetitious. Has No Basis Either in Fact or Law

Respondent charges that the petitioners' affidavit detailing fraud, is but a repetition of such allegations and assertions unsuccessfully made by them when the Tax Court's decision of September 28, 1951, was before that tribunal on review.

The petitions for rehearing alluded to by the respondent are numbers 678 (R. 111-123) and 678 (R. 124-134). They constitute a part of the record and are open to examination by this Court. The additional motions and affidavits referred to by respondent (No. 678, R. 139-140) were never passed upon by the United States Court of Appeals for the District of Columbia Circuit. Therefore, no opportunity thereby was af-

forded the Petitioners to present to the said Court of Appeals the issues of fraud as reflected in the foregoing proceedings.

In prosecuting their petition for a Writ of Certiorari in this Court, Nos. 12, 340-1, 347 U.S. 975), the petitioners did not include the issue of fraud. The petitioners excluded the issue of fraud in said petition for Certiorari on the strength of the decision in the case of *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U.S. 185. Moreover, the petitioner felt that in as much as the issue of fraud effected the administration of justice in the Tax Court and that the fraud originated in that court, it was reasonable and equitable to raise the issue of fraud in the Tax Court in an appropriate proceeding. Petitioners perceive in so doing all parties impeached by the fraudulent charges would have an opportunity to come forward and answer under oath these charges. There was no answer filed by Judge Luther A. Johnson of the Tax Court, notwithstanding the grave implications of those charges as affecting and influencing his judicial determination in the case. Neither did any of the other persons impugned by the charges take occasion to reply. Certainly the procedure adopted by the petitioners afforded a fair and adequate opportunity for all concerned to be heard. In the *Hazel-Atlas* case, *supra*, at pp 239-240, Justice Black made it clear that the charge of fraud should initiate in the court where the fraud was perpretrated.

II

Respondent Has Changed His Position From That Taken in the Court of Appeals

The Respondent raised only the juri- lictional question in the United States Court of Appeals. The re-

spondent strenuously argued in said court that the judgment of the Tax Court became final, under Section 1140(b) of the Internal Revenue Code upon the denial of Certiorari by this Court. If the respondent felt that there was any merit in the position of "abandonment" or "repetitions", he would have urged it in argument before that court. Even when Judge Prettyman inquired of Respondent, during the course of argument, whether his position included that of being without merit, the respondent replied that he stood on the jurisdictional question.

It is difficult to now understand the ambiguous position of the respondent, especially when we consider the concessions made by respondent which formed a part of the Tax Court orders dated April 6, 1955. (Petitioners' Brief 8-9).

Petitioners may well argue that if the Court of Appeals had had an opportunity to consider the said orders of the Tax Court its determinations of the issues herein may have been different.

It is significant that the respondent has cited no case in support of the position which he now takes before this Court. A member of the law firm accused in petitioner's affidavit of fraud has heretofore met the disciplinary hands of this Court. In the case of the *United States et al.* v. *Johnson,* 319 U.S. 302, 305, referring to this member of said law firm, this Court said:

> "The public interest has been placed at hazard by the amenities of the parties to a suit conducted under the dominion of one of them. We accordingly vacate the judgment below with instructions to the District Court to dismiss. So ordered."

Upon a consideration of the position taken by the respondent in the said Court of Appeals as compared with the position which he now takes before this court, one may easily conclude that it is he, and not the petitioners, who, is guilty of abandonment.

III

The Order of the Court of Appeals Dehors the Record

In order to grant the respondents' motion to dismiss it was necessary for the Court of Appeals to raise an issue which was not before it for decision. The respondent's motion to dismiss presented the sole question of jurisdiction. Petitioners do not question the right or power of an appellate court to decide issues not raised on appeal in the interest of justice. However, when any such issue raised of its own motion, by the appellate, dehors the record, and at the same time tends to thwart the administration of justice, the high powers of this Court should be invoked to review such action.

Petitioners firmly believe that in as much as the charges of fraud remain unchallenged, when every opportunity was given to answer, they have a cause tantamount to the *Hazel-Atlas* case, *supra*. They feel that the following language of that decision stands as their protector:

> "Every element of fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgment."

Petitioners believe that this Court empowered as the tribunal to construe and declare constitutional guarantees, intended their protection as well, when it further stated in its *Hazel-Atlas* opinion as follows:

> "This is not simply a case of judgment obtained with the aid of a witness, who on the basis of after discovered evidence is believed possibly to have been guilty of perjury. We find a deliberately planned and carefully executed scheme to defraud not only the patent office but also the Circuit Court of Appeals."

Petitioners believe that the issue of fraud raised in the Tax Court are of great moment and should command the attention of this Court to the extent of first granting the petition for Certiorari.

Respectfully submitted,

EDITH S. PARKER,

HARRISON PARKER,
820 Conn. Ave. N. W.
Washington, D. C.
Trustees
acting under the designation of the above entitled cause.

26/14

FILED
SEP 26 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 307

PURITAN CHURCH—The Church of America.
PURITAN CHURCH BUILDING FUND,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MOTION BY THE PETITIONERS FOR THE APPOINTMENT BY THIS COURT OF A COMMISSIONER TO EXAMINE THE EVIDENCE OF FRAUD BY THE RESPONDENT IN THE ABOVE ENTITLED CAUSE, WHICH WAS DISCOVERED TO THE PETITIONERS AFTER THEIR PETITION FOR WRIT OF CERTIORARI IN THE ABOVE ENTITLED CAUSE, HAD BEEN FILED IN THIS COURT.

EDITH S. PARKER,
REV. HARRISON PARKER,
Trustees acting under the designation of the above entitled cause,
820 Connecticut Avenue,
Washington, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

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COME NOW, the petitioners, and beg this court to appoint a Commissioner to examine under oath, the evidence of fraud in the above entitled cause by the respondent, discovered to the petitioners, after their pe-

tition for writ of certiorari had been filed in this Court, to wit:

Without ever having viewed the books of the petitioners; without ever having asked to view them; without ever having either consulted his superior, or talked with the petitioners, John W. Burns, Revenue Agent, filed against the Puritan Church, the petitioner:

> A "one man" 100% gross bank deposit income tax assessment, plus 50% for fraud, plus 25% for not having made a return of taxable income.

The consequences of said Burns' lawlessness, are:

1. The Puritan Church is wounded and handicapped in its religious activities, by the Government of the United States, with a judgment for $264,000 which is accumulating interest at the rate of $11,166 a year and will continue to accumulate that interest, until $264,000 and accumulating interest shall be paid in nickels and dimes, which must be gathered in from its already tax overburdened communicants, and paid to the U. S. Government;

2. The Puritan Church Bible and Building Trust Fund in the custody of the Greenwich Trust Company, has been confiscated to the last penny, to the Treasury of the United States to pay $106,000 on the present unpaid judgment against the Puritan Church.

3. The otherwise free and clear $34,500 building site for a Puritan Meeting House at Washington, D. C., has been sold at public auction, by the Government of the United States;

4. All possessions of the Puritan Church have been attached by the Government of the United States, ex-

cept the spirit which caused the direct sires of the communicants of this Church, "to throw the tea into the Boston Harbor"; except the spirit which caused the direct sires of the communicants of the Church, to fire at Concord, Massachusetts, April 19, 1775, the first shot in the American Revolutionary War; except the spirit which caused the direct sires of the communicants of this Church, to spill their blood in the snow in the American Revolutionary War, from Valley Forge to Yorktown for the Bill of Rights in the Constitution of the United States; except the spirit which caused the Puritan, Theodore Parker, to utter the following words which were made immortal by Abraham Lincoln in his Gettysburg Address, to wit:

> "Government of the people, by all the people, for all the people."

Had said Burns called at the office of the Puritan Church, as the Internal Revenue Code had directed him to do; and, had said Burns assessed the Puritan Church according to the provisions of the Internal Revenue Code, it would have paid out of its $67,000 general fund then on hand, any tax, rather than waste that $67,000 and six years of time in the courts of the United States fighting the fraud in this litigation, by the respondent.

More than a year after said Burns' "100% bank deposit" income tax assessment had wrought such damage in the affairs of the Puritan Church; more than a year after the $106,000 cash Bible and Building Trust Fund had, without a trial or a court award, been confiscated to the Treasury, as a part payment on said Burns' solely determined $359,000 income tax assessment, the books, certified public accountant's audit and

financial records of the Puritan Church which had always been available and open to said Burns, were handed by the Puritan Church to Hon. Luther A. Johnson, Judge in the Tax Court of the United States. He handed those books to said Burns on the witness stand. He had all those books and records in his undisputed possession for three entire days.

In those books then in the lap of said Burns, under date of January 29, 1948, there was a record of Check, No. 26@, for $704.08 payable to the Collector of Internal Revenue at Chicago; this check was cashed by him; the proceeds of that check are in the United States Treasury (see cash records of the Collector at his Madison Ave. and Pulaski Rd. office, Chicago).

In his income tax assessments against the Puritan Church, said Burns had determined that this particular check for $704.08 was income of the Puritan Church subject to assessment at the rate of 100%, plus 50% for fraud; plus 25% for not having returned this $704.08, as taxable income.

According to the volunteered testimony of said Burns on the witness stand in the Tax Court, he "picked up" in the office of the United States Attorney at Chicago, a bank statement of the Puritan Church. On this statement, under the heading "Deposits" said Burns saw an item of $704.08; without knowing what this "deposit" item was for, said Burns, there and then, determined it was taxable income of the Puritan Church. Had he called at the address of the Puritan Church, which he knew, or at the Bank whose address was stamped on the statement, he would have learned that the deposit item, $704.08 had been made to "cover" a check sent by the Puritan Church to the

Collector of Internal Revenue at Chicago, in payment to the U. S. Government for its "Withholding Tax". Instead of doing as he should have done, said Burns put that item of $704.08 on his adding machine, along with other like "deposit items" to the amount of $359,000; this, said Burns determined was the "income tax assessment" for the Puritan Church. In short, Burns charged that check for $704.08, with an additional income tax of approximately $300. computed at the rate of 100%, plus 50% for fraud, plus 25% for not having made a return of that $704.08, as taxable income of the Puritan Church.

Upon the notice in the Puritan Church books, of this error in his "100% gross bank deposit assessment," said Burns refused in the Tax Court to change his original "100% gross bank deposit assessment;" he would not admit that this check to the United States Government was a disbursement; Hon. Luther A. Johnson, Judge of Tax Court, upheld him in his refusal.

In those same Puritan Church books, then in the possession of said Burns on the witness stand in the Tax Court, there was on page one of its Day Book, an item $4212.75 clearly marked on that book: "proceeds from the sale of Boston and Albany Stock loaned to the Church by Edith S. Parker to be sold to replenish the Free Bible Fund"; said Burns insisted that this loan from Edith S. Parker to the Puritan Church, was taxable income, and the checks in payment to Edith S. Parker were not disbursements of the Puritan Church; said Burns refused to modify his "100% gross bank deposit income tax assessment, plus 50% for fraud, plus 25% for not having returned" this item, as tax-

able income of the Puritan Church; Luther A. Johnson, trial Judge upheld said Burns in his adamant refusal.

In those same Puritan Church books, then in the Tax Court, there was an indelible record:

1. Checks 1/10/48 No. 1708 for $4780.59 payable to C. C. Waterbury and cashed by him at petitioner's bank at Montague, Mich.;
2. Check 1/8/48 No. 1718 for $3018.21 payable to C. C. Waterbury and cashed by him;
3. Check 1/13/48 No. 1701 for $3853.80 payable to C. C. Waterbury and cashed by him;
4. Check 1/5/48 No. 2109 for $9173.75 payable to C. C. Waterbury and cashed by him;
5. Check 1/5/48 No. 2A for $4090.10 payable to C. C. Waterbury and cashed by him;
6. Check under date of 1/23/48 No. 3A for $83.55 payable to C. C. Waterbury and cashed by him;
7. Check 1/23/48 No. 1704 for $5000.00 for the purchase of a Cashier's Check payable to C. C. Waterbury.

The undisputed testimony in the Tax Court was: C. C. Waterbury had loaned the Puritan Church $30,000 in cash, and had been repaid in full, in cash, by checks on the Puritan Church account in its Montague State Bank. The petitioner's books then under the scrutiny of Luther A. Johnson, Trial Judge, were clearly marked: "for repayment of loan made by C. C. Waterbury to start construction of Puritan Meet-House".

With that evidence in front of him, said Burns insisted that this $30,000 was income of the Puritan

Church and had been assessed by him for 100% of gross bank deposits, plus 50% for fraud, plus 25% for not having returned these items as taxable income of the Puritan Church. Judge Johnson upheld said Burns in his refusal to concede that these $30,000 of items were disbursements, and not taxable income.

In those same books, there was this item:

> 1/15/48, check no. 1688 for $15.00 payable to the Chicago Bible Society and marked: "for Bibles for free distribution in prisons;" said Burns refused to grant that this check was for a disbursement; he insisted that it was taxable income and had been assessed as a part of his "100% gross bank deposit assessment at $15.00, plus 50% for fraud, plus 25% penalty for not having returned" that $15.00 as taxable income. Judge Johnson upheld said Burns in his contention.

These items alone, showed that said Burns "100% gross bank deposit assessment" was irretrievably in error, $34,931.83. The other items in those books, had they been examined according to the provisions of the Internal Revenue Code, would have revealed that said Burns "100% gross bank deposit assessment" was in error, 100%; that the Puritan Church did not owe a single cent of income tax. Rather, it had a net operating loss for that period, of over $32,000 which had been made up by loans to it, from Anita Bird, a daughter in the 10th generation of her Puritan family born on American soil in direct descent from Deacon Thomas Parker who founded the Puritan Church "in the Colonies" in the year 1642.

Notwithstanding the admitted illegality of these assessments, an income tax of about $300.00 on the $708.04 check to the U. S. Gov't., and the income tax of about

$17,000 on the other $34,000 of items listed above, was paid to the U. S. Gov't. by the petitioner out of the $106,000 Bible and Building Trust Fund, which had been seized by the U. S. Gov't. in the Greenwich Trust Company, as a "part payment" on the "one man" $359,000 income tax assessment made by said Burns against the Puritan Church, the petitioner herein.

The following is a transcript of part of the testimony of said Burns, the agent of the respondent, under oath in the Tax Court, and not corrected, denied or disputed in the entire Tax Court record:

> "I am an Internal Revenue Agent (Tr. 180). I knew where the office of the Church was in LaGrange (Tr. 199). I never visited that office. I never went there to make a request for records (Tr. 199). I did not consider that anything could be gained, by making a demand for its books (Tr. 189); so I made, without view of any of the Church's books and records, a 100% bank deposit income tax of $359,000. against the Puritan Church, the Church of America which included 50% for fraud and 25% for not having made a return" (Tr. 182);
>
> "I examined the books and records of the petitioner which were turned over to me Friday (June 2, 1950). The books appeared to be cash receipts and disbursements in the form of a day book; there were detailed ledger sheets; the ledgers were in bound ledger form; these books are not of original entry; there are books which could be called books of original entry; there were some loose sheets; there were miscellaneous papers, payrolls, etc. from December 1945 to April 7, 1947; there was a statement of cash receipts and disbursements for the calendar year of 1946; a net income for the year 1946 could be ascertained; the net income for tax purposes for the year 1946, could be deter-

mined; I did look through all the vouchers and cancelled checks; there were also three types of packages which we did not examine; they were through December 1946 to April of 1947; if I had sufficient time I might be able to get a summary out of these books of cash receipts and disbursements; the books here are from December 1945 up to April 7, 1947." (Tr., at pages 468 to 475; 790; 791.)

By this undisputed testimony, said Burns admitted that, in making his 100% gross bank deposit assessment against the defenseless Puritan Church, he had violated the following law which has never been either annuled, cancelled or modified by any court of competent jurisdiction:

In *Stockstrom* v. *Commissioner of Internal Revenue,* 190 F. 2d, 283, 289, the court said:

> "* * * the Commissioner obtained from Stockstrom's books the facts and figures concerning the 1938 gifts. If he later decided that tax liability existed he could have made a return for the taxpayer; indeed it was the duty of the Commissioner's subordinate, the collector, to do so. 26 U.S.C.A., Sec. 3612."

By this testimony said Burns conceded that, in making his "100% gross bank account assessment" against the prostrate Puritan Church, he had violated the law established in the following case and still in full force and effect:

In *Taylor* v. *United States,* 293 U.S. 509, 575, this Court said:

> "In this case the taxpayer's evidence shows the Commissioner's determination to be arbitrary and excessive it may not reasonably hold that he is

bound to pay a tax that confessedly he does not owe".

By this testimony, said Burns under oath on the witness stand, confessed, that in making his "100% gross bank deposit assessment" against the outraged Puritan Church, he had violated every provision of Sec. 3644, Title 26, Internal Revenue Code and had trampled under foot, the law established by the following cases, in order to make a "100% gross bank deposit income tax assessment":

In *Martin* v. *Chandis Securities Company,* 128 F. 2d, 731, 735, the Court said:

> "The rights of an internal revenue agent, both to his Government and to the petitioner are statutory, and in order to obtain relief granted by this section and section 3014 of this title, he must bring himself within the terms thereof."

In *U. S.* v. *Perryman,* 100 U.S. 235, 238, this Court said:

> "As the right is statutory, the claimant (the United States) cannot recover unless he brings himself within the terms of the statute; this he has not done."

By his admitted, undenied, undisputed testimony abstracted above, said Burns acknowledged, that his "100% gross bank deposit assessment" against the Puritan Church was illegal, and all the proceedings by the respondent to collect Burns personally made $359,000 income tax assessment were void *ab initio.*

All this skullduggery in the Tax Court of the United States was made valid by a decision of the Tax Court dated September 28, 1951, and by the following per

curiam opinion of the U. S. Court of Appeals for the District of Columbia Circuit:

> "* * * Tax Court made findings in great detail and rendered a careful opinion. Upon examination of the record we conclude that the findings are supported by ample substantial evidence. We find no error in any other respect.
>
> *Affirmed.*"

Dated November 5, 1953

(See Reply Brief for Petitioner in U. S. Court of Appeals No. 11,587)

The books of the Puritan Church then in the possession of said Burns, had been marked by the order of Luther A. Johnson, Judge of the Tax Court:

> "Tax Court of the U. S., Div. 10,
> Docket 23814, marked for identification
> June 6, 1950, Petitioner's Exhibit 52."

To have had those books admitted into the Tax Court's record would have proven that said Burns' "100% gross bank deposit assessment" was illegal and all proceedings by the respondent based on that illegal assessment void. In that acute situation in the Tax Court, W. A. Schwerdtfeger, special attorney for the respondent, there and then in the Tax Court on the payroll of the U. S. Gov't., and at the same time, in the employ of the Chicago and Washington, D. C., law firm of Kirkland, Fleming, Martin and Ellis, arose in the astonished court-room and said:

> "I object to their introduction" (TRS 698) (meaning he objected to the introduction of the books of the Puritan Church which showed on their face, that said Burns' "100% gross bank deposit assessment" was in error at least $34,931.83 and void, unless corrected then and

there by said Burns or by the order of the Trial Judge).

At Tr. page 698 of the same Court record, Luther A. Johnson, Trial Judge in the Tax Court, in reply to said Schwerdtfeger's motion said:

"I will sustain the objection."

This colloquy between the agent for the respondent and the trial judge is but one of the overt acts in the criminal conspiracy between the law firm of Kirkland, Fleming, Green Martin and Ellis, W. A. Schwerdtfeger, an agent of the respondent, Luther A. Johnson, trial judge of the Tax Court, the notorious Charles Oliphant and others, to sabotage the Puritan Church in the Tax Court with an unconscionable judgment for $264,000 for income taxes.

By his motion, W. A. Schwerdtfeger suppressed evidence in important litigation in the Tax Court in which the United States will be the beneficiary, unless rectified by this Court.

On the witness stand in the Tax Court, V. V. Sugg, the U. S. Postal Inspector and witness for Schwerdtfeger in the Tax Court litigation, testified as follows:

"My name is V. V. Sugg; I am a Post Office Inspector (Tr. 239); I asked Mr. Parker how much they had taken in; he showed me something like a Day Book and said that they had taken in eight odd thousand dollars up to December 16 (1947); it was just a big book which I would term a daily cash receipt book (307); he had a book in which he said the daily receipts were posted; he showed me some figures in a book on a table; I did not touch the book; I did not ask to carry it away with me (308); there were weekly statements of clerical expenditures and things like that, prob-

ably 15 to 30 pages of it; I do not believe that I ever asked Mr. Parker for a subsequent statement; I saw Mr. Parker keeping a journal of daily receipts (359); that was available to me the day I saw it; I never again asked to see that particular book, nor any other book like that, book or ledger of daily receipts (360)."

The evidence now in possession of petitioners and ready for submission to a Commissioner for this Court, will prove that despite the above testimony, said Schwerdtfeger himself, in the office of Kirkland, Fleming, Green, Martin and Ellis in the room of Miss Cohen while she was absent in Europe, wrote into the decision of the Tax Court dated September 28, 1951 and signed Luther A. Johnson, Judge, at Tax Court record pages 86, 94 and 98, the following words:

"The petitioner did not keep books."

That allegation in the findings of the Tax Court is the basis for the 50 per cent fraud charge made in that Tax Court decision against the Puritan Church; there is not in the entire Tax Court record any evidence to prove fraud by the petitioner, the Puritan Church; the above statement was written into the Tax Court findings by said Schwerdtfeger, to fill the void created by the absence in the Tax Court record of fraud by the Puritan Church.

Previously in their charges of fraud in this litigation, the petitioners had never accused the agents of the respondent, the Commissioner of Internal Revenue, of fraud. The petitioners had their suspicions, but no evidence. Now, the petitioners have in their possession the necessary evidence to prove:

W. A. Schwerdtfeger, lawyer, agent of the respondent in charge of the litigation of the above entitled cause in the Tax Court, presently on the payroll of the Government of the United States, was in the employ of the law firm of Kirkland, Fleming, Green, Martin and Ellis, while he was on the payroll of the respondent, and in charge of the litigation of the above entitled cause in the Tax Court of the United States.

That evidence is now ready and available for scrutiny by a Commissioner of the Supreme Court of the United States.

The Judgment against the Puritan Church for $264,000 with current interest at the rate of $11,000 a year, is what this Court has determined, "unconscionable".

In the case of *Hazel-Atlas Company* v. *Hartford Empire Co.*, 322 U.S. 238, the Supreme Court of the United States at pages 244, 245, 246 thundered:

> "When enforcement of the judgment is manifestly unconscionable" 1 Pickford v. Talbott, 225 U.S. 251, they have wielded the power without hesitation."
>
> "Every element of fraud here disclosed, demands the exercise of the historic power of equity to set aside fraudulently begotten judgments."
>
> * * * * * * * * *
>
> "Furthermore, tampering with the administration of justice in a manner indisputably shown here involves far more than injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely

> it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."

If in the opinion of this Court, public unrest would be caused by the revelation of corruption in the Tax Court, which will be presented by the petitioners to a Commissioner of this Court, the petitioners beg this Court to return with a short-order, the above entitled cause to the Tax Court for re-trial there, before any Judge of that Court, except Hon. Luther A. Johnson.

Respectfully submitted,

EDITH S. PARKER,

REV. HARRISON PARKER,
Trustees acting under the aesignation of the above entitled cause,
820 Connecticut Avenue,
Washington, D. C.

6/15

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IN THE

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OCTOBER TERM, 1955

No. 307

PURITAN CHURCH—The Church of America.
PURITAN CHURCH BUILDING FUND,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A REHEARING

EDITH S. PARKER,
REV. HARRISON PARKER,
Trustees acting under the designation of the above entitled cause,
820 Connecticut Avenue,
Washington, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

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OCTOBER TERM, 1955

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PURITAN CHURCH—The Church of America.
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Respondent.

PETITION FOR A REHEARING

The Puritan Church—The Church of America—and the Puritan Building Fund are citizens of the United States. Their Bible and Building Trust Fund, in the custody of the Greenwich Trust Company, was robbed of $106,000.00 cash by Roman Catholic tax thieves on the pay-roll of the Government of the United States.

By this petition for a rehearing, the petitioners are invoking in the Supreme Court of the United States the protection of equal law guaranteed to all loyal

citizens of the United States by the "Due Process" clause in the Constitution of the United States and by Rule 19 of the Supreme Court of the United States, to wit:

> "The following will indicate the character of reasons which will be considered [for granting a petition for a re-hearing]:
>
> "B. Where a Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for the exercise of this Court's power of supervision."

The undisputed evidence in this litigation on page 10 of this petition proves that both the Tax Court and the United States Court of Appeals for the District of Columbia Circuit did depart, in this proceeding, so far from the usual course of judicial proceeding as to call for an exercise of this Court's power of supervision.

Denial of this petition for a rehearing in this litigation would mean that the Supreme Court of the United States has put the seal of its approval on the following crooked transaction in the Tax Court of the United States and in the United States Court of Appeals for the District of Columbia Circuit, to wit:

> John W. Burns, a Roman Catholic, United States Revenue Agent, with no evidence to sustain him, concocted in his own brain a void $359,000.00 income tax assessment against the tax-exempt Protestant Puritan Church; on this void assessment the Tax Court of the United States robbed the Puritan Church and its Bible and Building Fund in the Greenwich Trust Company of $106,000.00 cash; Luther A. Johnson, Judge of the

Tax Court of the United States, was either influenced, intimidated or bribed, to validate said robbery of a trust fund; and the United States Court of Appeals for the District of Columbia Circuit was either influenced, intimidated or bribed to validate this crooked decision of Luther A. Johnson, Judge of the Tax Court.

Denial of this petition for a rehearing in the above entitled cause will be notice to the Protestant world that the Roman Catholic tax thieves have established in the court system of the United States a court procedure which can be used by them to rob and close Protestant churches and "jerk" into Luther A. Johnson's crooked Tax Court of the United States for confiscation every dollar of Protestant private property in the United States, including that of the Rockefeller Foundation.

Denial of this petition for a rehearing in the above entitled cause will be notice to the Protestants of the United States that there is not, in the judicial system of the Government of the United States, a tribunal from which Protestants can obtain the equal protection of the law when they are "black-jacked," robbed and murdered by Roman Catholic hoodlums and hired assassins.

Denial of a petition for a rehearing in this litigation, in effect, will be a "license" to the law firm of Kirkland, Fleming, Green, Martin and Ellis, to continue their murdering activities against Protestant ministers; to continue "fixing" the courts of the United States to make it Catholic. (This law firm is the general counsel for Cardinal Stritch, the business agent in the United States for the Pope of Rome.)

Denial of a petition for a rehearing in this litigation will be notice to the Protestant world that under the court procedure now established in the United States by John B. Martineau, Roman Catholic counsel for the Roman Catholic Cardinal Stritch, and upheld by Roman Catholic Kirkham Scanlan's Roman Catholic crooked Court of Appeals of Illinois, any Protestant minister in the United States can be "picked up" without either a subpoena or a warrant and thrown into a common jail and held there. (Dr. Agnes Richardson, a Puritan minister, was a spectator at a public hearing. Without a subpoena, without a warrant, the Roman Catholic John B. Martineau personally "picked her up" and put her in the Cook County jail and held her there for ten days. The outraged woman was not allowed a lawyer to protect her. Under the horror of the situation, the innocent woman became mentally deranged, and her husband died from the shock of the jailing of his wife.)

Denial of this petition for a rehearing in the above entitled cause will be notice to the Communist propaganda, counter to the "Voice of America," that Roman Catholics in the United States are committing upon Protestant ministers atrocities worse than those committed upon the Roman Catholic Cardinal Mindtzenty by European Communists; Cardinal Mindtzenty was, at least, allowed a lawyer to defend him.

Denial by the Supreme Court of the United States of this petition for a rehearing in the above entitled cause will be notice to the Protestant majority in the United States that the Roman Catholic minority, without the firing of a single shot, has changed the

form of government in the United States from government by law, to rule by an oligarchy.

Following are the citations of established law in the United States which had to be violated both by the Tax Court and by the United States Court of Appeals for the District of Columbia Circuit in order to validate there John W. Burns' void $359,000.00 income tax assessment against the income tax exempt Puritan Church.

Without ever having viewed the books of the petitioners; without ever having asked to view them; without ever having called at the office of the petitioner; without ever having either consulted his superior, or talked with the petitioners; with no evidence to sustain a 100% gross bank deposit assessment, John W. Burns, Revenue Agent, filed against the Puritan Church, the petitioner:

> A "one man" 100% gross bank deposit income tax assessment, plus 50% for fraud, plus 25% for not having made a return of taxable income.

More than a year after said Burns' "100% bank deposit" income tax assessment had wrought such damage in the affairs of the Puritan Church; more than a year after the $106,000 cash Bible and Building Trust Fund had been confiscated to the Treasury of the United States, the books, certified public accountant's audit and financial records of the Puritan Church were handed by the Puritan Church to Hon. Luther A. Johnson, Judge in the Tax Court of the United States. He handed those books to said Burns. Then said Burns saw for the first time the books of the Puritan Church which, had he asked for them, would have been available to him before he had

made his illegal 100% fraud income tax assessment. Those books were in the possession of said Burns and W. A. Schwerdtfeger, lawyer for the respondent, for three entire days.

In those books there was, under date of January 29, 1948, a record of Check No. 26@, for $704.08 payable to the Collector of Internal Revenue at Chicago; this check was cashed by him; the proceeds of that check are in the United States Treasury (see cash records of the Collector at his Madison Ave. and Pulaski Rd. office, Chicago).

In his income tax assessments against the Puritan Church, said Burns had determined that this particular check for $704.08 was income of the Puritan Church subject to assessment at the rate of 100%, plus 50% for fraud; plus 25% for not having returned this disbursement check of $704.08, as taxable income.

According to the volunteered testimony of said Burns on the witness stand in the Tax Court, he had "picked up" in the office of the United States Attorney at Chicago, a bank statement of the Puritan Church. On this statement, under the heading "Deposits" said Burns saw an item of $704.08; without knowing what this "deposit" item was for, said Burns, there and then, in violation of Secs. 3612 and 3654, Title 26, Internal Revenue Code, determined it was taxable income of the Puritan Church.

Had said Burns called at the address of the Puritan Church, which he knew, or at the Bank whose address was stamped on the statement, he would have learned that the "deposit" item, $704.08, had been made to "cover" a check sent by the Puritan Church to the Collector of Internal Revenue at Chicago, in payment

to the U. S. Government for its "Withholding Tax". Instead of doing as he should have done, said Burns put that item of $704.08 on his adding machine, along with other like "deposit" items to the amount of $359,000; this said Burns, in violation of all established law, determined was the "income tax assessment" for the Puritan Church. In short, Burns charged that tax payment check for $704.08, with an additional income tax of approximately $300. computed at the rate of 100%, plus 50% for fraud, plus 25% for not having made a return of that $704.08 check, as taxable income of the Puritan Church.

Upon this notice in the Puritan Church books that his "100% gross bank deposit income tax assessment" was in error at least $704.08, said Burns refused in the Tax Court to change his original "100% gross bank deposit assessment;" he would not admit that this check to the United States Government was a disbursement; Hon. Luther A. Johnson, Judge of Tax Court, upheld him in his refusal.

By including this $704.08 disbursement item in his $359,000 income tax assessment against the Puritan Church, said Burns rendered the assessment null and void. All proceedings by the Government of the United States to collect the income tax on said Burns' void assessment are also void. In short, the United States Government has collected an additional income tax of $300.00 on a check of $704.08 which was given to it and cashed in payment of a withholding tax of $704.08. This is fraud in the Tax Court, which cries out for "an exercise of this Court's power of supervision over the lower courts."

Unless this Court shall grant in this litigation the petitioner's petition for a rehearing, a Court pro-

cedure will have been established in the Tax Court of the United States and in the Court of Appeals for the District of Columbia Circuit by the use of which all the property of the General Motors Corporation and the Henry Ford Company could be confiscated to the Treasury of the U.S.A. in the 1955 tax.

The following is a transcript of part of the testimony of said Burns, under oath in the Tax Court, and not corrected, denied or disputed in the entire Tax Court record:

> "I am an Internal Revenue Agent (Tr. 180). I knew where the office of the Church was in LaGrange (Tr. 199). I never visited that office. I never went there to make a request for records (Tr. 199). I did not consider that anything could be gained, by making a demand for its books (Tr. 189); so I made, without view of any of the Church's books and records, a 100% bank deposit income tax of $359,000. against the Puritan Church, the Church of America which included 50% for fraud and 25% for not having made a return" (Tr. 182);
>
> "I examined the books and records of the petitioner which were turned over to me Friday (June 2, 1950). The books appeared to be cash receipts and disbursements in the form of a day book; there were detailed ledger sheets; the ledgers were in bound ledger form; these books are not of original entry; there are books which could be called books of original entry; there were some loose sheets; there were miscellaneous papers, payrolls, etc. from December 1945 to April 7, 1947; there was a statement of cash receipts and disbursements for the calendar year of 1946; a net income for the year 1946 could be ascertained; the net income for tax purposes for the year 1946, could be determined; I did look

through all the vouchers and cancelled checks; there were also three types of packages which we did not examine; they were through December 1946 to April of 1947; if I had sufficient time I might be able to get a summary out of these books of cash receipts and disbursements; the books here are from December 1945 up to April 7, 1947." (Tr., at pages 468 to 475; 790; 791.)

By this testimony under oath in the Tax Court, said Burns, under cross examination there, confessed that he had neglected to summon the books of the Puritan Church before he had made his 100% gross bank deposit assessment, plus 50% for fraud, plus 25% for not having made a return. By his failure to summon those books, said Burns violated Sec. 3654, Title 26, Internal Revenue Code, and the law of the United States which was established to protect taxpayers from the law violations admitted by Burns.

Section 3654, Title 26, Internal Revenue Code:

> "Every internal revenue agent shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection and punishment of any fraud, in relation thereto. For such purposes, he shall have power to examine all persons, books, papers, accounts and premises, to administer oaths and to summon any person to produce books and papers, or to appear and testify under oath before him, and compel compliance with summons in the manner as provided in Section 3615."

In *Martin* v. *Chandis Securities Company,* 128 F. 2d, 731, 735, the Court said:

> "The rights of an internal revenue agent, both to his Government and to the petitioner are

> statutory, and in order to obtain relief granted by this section and section 3014 of this title, he must bring himself within the terms thereof."

In *U. S.* v. *Perryman*, 100 U.S. 235, 238, this Court said:

> "As the right is statutory, the claimant [the United States] cannot recover unless he brings himself within the terms of the statute; this he has not done."

This violation of the statute and the law by said Burns was called to the attention of the United States Court of Appeals; it ignored it.

By this disgraceful testimony in the Tax Court, by the Roman Catholic John W. Burns, it was admitted that the net income of the Puritan Church for the taxable year 1946, could have been ascertained by said Burns from the books of the Puritan Church then in his possession for the first time, because he had never requested their production before; by this unusual testimony by the man who alone had assessed the Puritan Church an income tax of $359,000, because he had not viewed the books of the Puritan Church, the Puritan Church was robbed of all its personal property in the Tax Court of the United States. The Tax Court record, at page 997, reveals that the government of the United States collected $7,498.67 from the Puritan Church Bible and Building Trust Fund, on said Burns' $359,000 void assessment, as follows:

Deficiency	50%	25%
$4,284.95	$2,142.48	$1,071.24

If the Supreme Court of the United States shall not exercise its control of the lower courts, to erase this

scandal in the Tax Court, every Protestant church in the United States will be "on notice" that it will remain open, until a Roman Catholic John W. Burns shall get possession of its "bank deposits" and use it as the basis for an income tax assessment which will confiscate all its personal property to the government of the United States.

Had said Burns followed the instructions to United States Revenue Agents in Section 3612, Title 26, Internal Revenue Code, and the established law of the United States, he would have then and there substituted a legal income tax assessment against the Puritan Church for the year 1946 for his void 1946 assessment.

Section 3612:

> "If any person fails to make and file a return or list at the time prescribed by law or by regulation made under the authority of law * * * the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise."

In *Taylor* v. *United States*, 293 U.S. 509, 575, this Court said:

> "In this case the taxpayer's evidence shows the Commissioner's determination to be arbitrary and excessive it may not reasonably hold that he is bound to pay a tax that confessedly he does not owe."

In *Stockstrom* v. *Commissioner of Internal Revenue*, 190 F. 2d, 283, 289, the Court said:

> "* * * the Commissioner obtained from Stockstrom's books the facts and figures concerning the

> 1938 gifts. If he later decided that tax liability existed he could have made a return for the taxpayer; indeed it was the duty of the Commissioner's subordinate, the collector, to do so. 26 U.S.C.A., Sec. 3612."

This violation of the statute and the law by said Burns was called to the attention of the United States Court of Appeals for the District of Columbia Circuit. It ignored it! A violation of the provisions of the Internal Revenue Code is a matter of such importance in the economy of our country as to call for an exercise of this Court's power of supervision.

The books of the Puritan Church then in the possession of said Burns and said Schwerdtfeger had been marked by the order of Luther A. Johnson, Judge of the Tax Court:

> "Tax Court of the U. S., Div. 10,
> Docket 23814, marked for identification
> June 6, 1950, Petitioner's Exhibit 52."

To have had those books admitted into the Tax Court's record would have proven that said Burns' "100% gross bank deposit assessment" was illegal and all proceedings by the respondent based on that illegal assessment void.

In that acute situation in the Tax Court, W. A. Schwerdtfeger, special attorney for the respondent, arose in the astonished court-room and said:

> "I object to their introduction" (TRS 698) (meaning he objected to the introduction of the books of the Puritan Church which showed on their face, that said Burns' "100% gross bank deposit assessment" was in error at least $7,498.67 and void, unless corrected then and there by said Burns or by the order of the Trial Judge).

At Tr. page 698 of the same Court record, Luther A. Johnson, Trial Judge in the Tax Court, in reply to said Schwerdtfeger's motion said:

"I will sustain the objection."

By that motion, said Schwerdtfeger suppressed, in the United States Court, evidence which, had it been admitted, would have revealed that the Puritan Church had not a single cent of taxable income.

By that rule by Luther A. Johnson, Judge, established in the Tax Court of the United States a procedure by the use of which every dollar of private property in the United States can be confiscated to the Government for income taxes.

The Puritan Church has in its possession evidence to prove that said Schwerdtfeger, then on the payroll of the U. S. Government, was in the employ of Cardinal Stritch's general counsel. This evidence was tendered to the Tax Court, to the United States Court of Appeals, and to the Supreme Court of the United States, and refused by each.

The Puritan Church sought in the United States Court of Appeals, a sanctuary from the Roman Catholic scoundrelism in the Tax Court. There, the Roman Catholic Chief Judge, Stevens, assigned the Protestant Church litigation to the court panel in the control of the Roman Catholic Judge, Fahy. He validated all the Roman Catholic law violations in the Tax Court with the following words:

"* * * Tax Court made findings in great detail and rendered a careful opinion. Upon examination of the record we conclude that the findings are

supported by ample substantial evidence. We find no error in any other respect.

Affirmed."

Dated November 5, 1953

This obviously crooked opinion validating said John W. Burns' void income tax assessment was appealed to the Supreme Court of the United States for review in it. Its answer was:

"Petition for certiorari denied."

The consequences of those four words are:

1. The income tax exempt Puritan Church was handicapped in its religious activities with a judgment for $264,000 for income taxes which is accumulating interest at the rate of $11,166 a year and will continue to accumulate that interest, until $264,000 and accumulating interest shall be paid in nickels and dimes to the U. S. Government;

2. The Puritan Church Bible and Building Trust Fund in the custody of the Greenwich Trust Company, was confiscated to the last penny, to the Treasury of the United States to pay $106,000 on the present unpaid judgment against the Puritan Church.

3. The otherwise free and clear $34,500 building site for a Puritan Meeting House at Washington, D. C., was sold by the Government of the United States to pay a void $359,000 income tax assessment which was inflicted by the Roman Catholic John W. Burns upon the defenseless Protestant Puritan Church.

For over 100 years, the paid political agents of the Vatican government of Europe, under the cunning plea for "religious toleration," have been working in

the United States under cover of religion to change the form of government in the United States from a

Government of all the people,
By all the people,
For all the people

to

A government of Roman Catholics
By Roman Catholics,
For Roman Catholics.

For over 100 years the Protestants of the United States have endured the corruption and scoundrelism which has been introduced into the institutions of government by the following named Roman Catholics:

The "Al Capone gang," the "Mafia gang" of Roman Catholic murderers, the Dennis Delaneys, the James A. Finneganes, and the long line of Roman Catholic hoodlums and tax thieves who, by Roman Catholic politics, have obtained control of, robbed and disgraced the taxing machinery of the Government of the United States and the office of Collector of Internal Revenue.

Now, at last, in the undisputed evidence that has been and is in the court record in the Supreme Court of the United States, the Protestants have a basis for a national struggle to change the Constitution of the United States, to forbid a Roman Catholic to occupy public office in the United States or serve in its army or navy, until he shall have foresworn all allegiance to the Pope of Rome, the sole owner and proprietor of the independent government of the Vatican, Europe, and sworn first allegiance to the government of the United States, its constitution and the law made under it. John W. Burns, the law-violating Roman Catholic

Revenue Agent of the United States, precipitated this Roman Catholic fight for the control of the Government of the United States by Roman Catholics; the Puritan Church, the Church of America, has accepted this challenge and will defend the Protestant interest in United States soil until it shall be decided at the ballot box whether the United States shall remain Protestant or join the Roman Catholic "bloc" of Ireland, Spain and other degenerate Roman Catholic ruled countries of Europe.

This fight for the Roman Catholic control of the Government, and its defense by the Puritan Church, may take 50 years of constant agitation. During that time the court records in this litigation will be subject to the same scrutiny which was given to the court record in the Sacco-Vanzetti litigation which started the growth of Communism in the United States.

This Church begs this Court to grant under its power of supervision of the lower courts, this petition for a rehearing, in order that the honored and respected Supreme Court may not be "tarred" with the "stick" of Roman Catholicism, in the long fight which has been started by the adherents of the Catholic Church—the Church of Rome, against the adherents of the Puritan Church—the Church of America.

The petition for a rehearing should be granted.

Respectfully submitted,

EDITH S. PARKER,
REV. HARRISON PARKER,
Trustees acting under the designation of the above entitled cause,
820 Connecticut Avenue,
Washington, D. C.